No. 10493

United States
Circuit Court of Appeals
For the Ninth Circuit

STATE OF WASHINGTON and EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

Appellants,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED. OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, Arizona; SIDNEY P. OSBORN, Governor, ANA FROHMILLER, State Auditor, and JIM BRUSH, State Treasurer, constituting the Loan Commissioners of the State of Arizona; JIM BRUSH, State Treasurer, and ANA FROHMILLER, State Auditor of the State of Arizona,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

APPELLANTS' REPLY BRIEF

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APPELLANTS' REPLY BRIEF

Many assertions made in the statement in Appellees' Brief, pp. 1-22, are not correct. Most of these statements are in the nature of legal conclusions, so we will not undertake to deny them categorically. We think, however, that the statement in Appellants' Brief, pp. 2-51, correctly sets forth the facts, and anything at variance with that statement, in Appellees' Brief, is denied by us.

We particularly deny the assertions to the effect that we appeared for our present clients in the mandamus suits, or represented said clients inthe taxpayer's suit. Lack of space compels us to limit our reply to the legal propositions asserted in Appellee's Brief.

Appellees' Brief, p. 2

Appellants' view of the *Toole County*, etc. case, is set forth in Appellants' Brief, pp. 88-89.

Appellees' Brief, p. 2 (Note)

The case of *Supervisors v. Hawkins*, was not mentioned in appellants' brief, and has no bearing whatever on the issues of this case. The quotation from the opinion of the court at the bottom of page 2 of Appelles' Brief,is merely a casual reference to Chap. 1, Tit. 52, Rev. Stat. 1913.

Appellees' Brief, p. 6 (B)

Erie R. Co. v. Tompkins, is discussed in Appellants' Brief, pp. 83-93. To this discussion we now add *Meredith v. Winter Haven*, 88 Law ed. 1 (adv.), 64 Sup. Ct. Rep. 7 (Adv).

Appellees' Brief, p. 7

The four authorities cited in the middle of the page, state the rule in diversity of citizenship cases, which has no application to this case.

Appellees' Brief, p. 7 (a)

We are unable to perceive that the four cases at the bottom of page 7, and the top of page 8, have any

application to any of the issues of this case. Appellants contention as to due process will be found in Appellants' Brief, p. 120.

Appellees' Brief, pp. 8-9 (2)

Art. 4, Chap. 60, Rev. Code 1928, was a new statute, materially differing from Chap. 1, Tit. 52, Rev. Stat. 1913. (Appellants' Brief, pp. 36-43, 54-57).

Appellees' Brief, pp. 18-19

The case of *State v. Stewart* does hold that the Code of 1939 is a compiled, and not a revised code, but distinguishes the 1928 code as a revised code, made by the legislature and not by a compiler.

The *Peterson, Walker and Melendez* cases must be considered together with the cases of,

Conway v. State Consolidated Pub. Co.,
57 Ariz. 162, 165; 112 Pac. (2d) 218.

Hunter v. Northern Ariz. Utilities Co.,
51 Ariz. 78, 83; 74 Pac. (2d) 577.

State v. Griffin, 58 Ariz. 187, 191;
118 Pac. (2d) 676.

Appelles' Brief, p. 22

Except for the statement in *Cone v. Rorick,* made in an opinion in which the majority of judges did not concur, the authorities cited at the bottom of this page of Appellees' Brief have no application to this case.

Argument

Appellees' Brief, pp. 23-25 (*a*) (*b*)

The cases here cited by appellees present no substan-

tial federal question. They are not in point in our case, by reason of the enactment of a new statute under which the bonds were issued, (Appellants' Brief, pp. 36-43, 54-57), and the passage of the resolutions by the Board of Supervisors and Loan Commissioners, calling appellants' bonds, (Appellants' Brief, pp. 43-44, 57-59, 80-81), the changes made by Art. 4, Chap. 60, Rev. Code, 1928, and the passage of the resolutions, do present a substantial federal question. (Appellants' Brief, pp. 60-89).

Appellees' Brief pp. 25-26 (*c*)

It was stated in Appellants' opening brief, that the controversy involved principally the interpretation of the contracts created by the issuance of the bonds, and did not present a federal question. This is plain, but the federal question is clearly pointed out to be presented by the attempt to impair the obligation of the bond contract by a subsequently enacted statute and subsequently enacted resolutions. It is this subsequently enacted statute, and these subsequently enacted resolutions, that give jurisdiction to the federal courts. Said courts having jurisdiction, are then required to pass upon the question whether or not there was a contract, and they must determine this according to their independent judgment, for, if they permitted the state court to declare what the contract was, they would fail to exercise the jurisdiction conferred upon them by the federal constitution and statutes. It is settled by an unbroken line of authorities, from *Jefferson Bank v. Skelly*, 1 Black 436, (Appellants' Brief, pp. 75-76) to *Irving Trust Co. v. Day*, 86 Law Ed. 452, (Appellants' Brief, p. 84), that the federal curts must independently determine the terms of

the contract, even though such determination is based wholly upon the interpretation of a state statute.

Appellees' Brief, pp. 26-27 (*d*)

That a mere breach of contract by a municipal corporation does not constitute impairment of the contract in a constitutional sense, as is held in the three cases cited under this heading, is admitted. But, in this case there was impairment of contract, both by a subsequently enacted state statute (Appellants' Brief, pp. 36-43), and by subsequently enacted resolutions of the Board of Supervisors and State Loan Commission, which undoubtedly impaired the contract created by the issuance of the bonds. (Appellants' Brief, pp. 51-59, 80-81).

Appellees' Brief, p. 28 (*e*)

The resolutions of the Loan Commissioners and Board of Supervisors are adopted under legislative authority, for the Supreme Court of Arizona has so held.

Maricopa County v. Osborn,

136 Pac. (2d) 270.

The resolution of the Loan Commissioners recites that the Board of Suervisors have demanded that the Loan Commissioners take action under Sec. 10-409 Ariz. Code Ann. 1939. (Trans. p. 174). The proposed notice of redemption calling the outstanding bonds, (Trans. p. 199) was expressly calling to be suf-

ficient under the statutes of the state by the Supreme Court.

Maricopa County v. Osborn,
136 Pac. (2d) 270.

Ariz. Stat. 1913, ceased to exist when Ariz. Rev. Code 1928 was enacted. (Appellants' Brief, pp. 36-43).

Appellees' Brief, p. 29 (*a*) (*b*)

The *Appelby* case is directly against appellees' contention. Where a question of impairment of the obligation of a contract is presented the federal courts must determine for themselves what the contract is, even though such determination involves the construction of a state law. (Appellants' Brief, pp. 60-85).

Appellees' Brief, pp. 30-31

It is true that the controversy involves principally the interpretation of the contract created by the issuance of the bonds, but the subsequently enacted statutes and resolutions give jurisdiction to the federal courts so as to require the federal courts to determine independently what the bond contract was.

Appellees' Brief, pp. 31-36 (*d*)

The bond contract was impaired by the enactment of Art. 4, Chap. 60, Rev. Code 1928. The 1939 Ann. Code made no further change, but action is now being taken under Art. 4, Chap. 60, Rev. Code 1928, now compiled as Art. 4, Chap. 10, Ariz. Code Ann. 1939.

Unquestionably, the newly enacted statute, and the resolutions of the Board of Supervisors and Loan Commissioners, constitute subsequently enacted laws impairing the obligation of the bond contracts. (Appellants' Brief, pp. 36-43, 54-57, 43-44, 57-59, 80-81).

The case of *Garland Co. v. Filmer*, does not support appellees' contention.

The case of *Cochran County v. Mann*, (Appellees' Brief, p. 33), holds that the substitution of the word "may" for "shall", was not a material change. This seems obvious.

The cases of *Cross Lake Shooting, etc. v. Louisiana*, and *Tidal Oil Co., v. Flannagan*, and *Frank v. Magnum*, (Appellees' Brief, pp. 34-35), are cases where no effect was given to a subsequently enacted state law. In our case, appellants' bonds are proposed to be called under the subsequently enacted state law and the resolutions of the Board of Supervisors and Loan Commissioners. If it were not for this subsequently enacted law, and these subsequently enacted resolutions, appellants would continue to collect their interest as heretofore. Thus, this subsequently enacted law and these subsequently enacted resolutions, are the very instruments by which appellants' bonds are being impaired. It is clear that said law and resolutions are agencies of invasion exactly like the cases reviewed on pages 80 and 81 of appellants' brief.

Appellees' Brief, pp. 35-37 (e)

The cases cited under this heading in appellees' brief presented no federal question. That this case does

present such a question is shown on pages 65-87 appellants' brief.

Appellee's Brief, pp. 37-39 (3)

The case of *Erie R. R. Co. v. Tompkins, and the* other cases cited under this heading, have no application, for the reason that this case presents a question of impairment of the obligation of a contract by a subsequently enacted statute, and subsequently enacted resolutions. (Appellants' Brief, pp. 84-89).

Appellees' Brief, 39-42 (4)

The cases cited under this heading by appellees, have no application to the question involved. The State of Washington is bound by and is entitled to the benefits of the bond contracts, but it is entitled to have its rights determined in the federal courts. (Appellants' Brief, pp. 4-5). It appears by its Attorney General. Appellees are not vested with any authority to tell the State of Washington whether it should sue them in the United States District Court of Arizona, or in the United States Supreme Court. The bonds it holds were purchased in the performance of its functions as a sovereign state. When it joined the Union, it surrendered the sovereign power to enforce its rights against the other states by negotiation and by force, and in return for this surrender of these sovereign powers it received the right under the federal constitution, to sue in the federal courts. Of this right the federal courts cannot permit it to be deprived by a friendly suit between Maricopa County and the State Loan Commissioners of Arizona, nor can the federal courts permit this constitutional right of the state to

be frittered away by their natural deference to the Arizona courts. In this case, deference is equally due to both sides and it is the duty of the court to apply the principles of right and equity with regard to the equal level or plane on which all of the states stand. (Appellants' Brief, pp. 89-97).

Appellees' Brief, pp. 42-44 (1)

We do not question the cases cited by appellees under this heading. We call attention, however, to the fact that in none of them were negotiable bonds authorized to be issued under one chapter with definite due dates and actually so issued, held to be callable in violation of their terms, by virtue of an ambiguous provision in another chapter.

State v. Smith, 96 S. W. (2d) 348, 351 (Mo.)

State v. Keith, 66 Pac. (2d), 1059 (Okla.)

Armer v. Wade, 48 Ariz. 1,
68 Pac. (2d) 525.

See also, pages 113-114, Appellants' Brief).

Appellees' Brief, pp. 44-48

The provisions inserted in trust deeds for accelerating maturity of bonds for the benefit of the bondholders, have no application whatever to the issues of this case.

Appellees 'Brief, p. 49 (*a*)

It is true that the new provision in the Act of Cong., June 25, 1890, was inserted for the purpose of

refunding county and municipal debts, but it was not intended to and did not authorize the call of county or municipal bonds before their due dates without the consent of the holders. (Appellants' Brief, Appendix, pp. xii, xi, xiii.) (Also, Appellants' Brief, pp. 111, 112).

Appellees' Brief, pp. 49-50 (*b*)

The *Schuerman* and *Yavapai County* cases based the right of the bondholders to require the bonds to be refunded upon the territorial act, which did not become a part of the Ariz. Rev. Stat. 1913.

Appellees' Brief, p. 51 (*c*)

Appellees' statement shows that counsel in this case, who appeared as amicus curiae, was not then correctly informed as to the history of the statute.

Appellees' Brief, p. 52 (*a*)

Under this heading, appellees take issue with the decision of the Supreme Court in the second mandamus suit, in that appellees say Chap. 1, Tit. 52, Rev. Stat. 1913, specifically applies to all bonds issued subsequently to 1913. The Supreme Court held that it did not apply to the refunding bonds issued under said chapter.

Maricopa County v. Osborn, 136 Pac. (2d) 270.

The words, "that is now or hereafter may be authorized by law", were used only with reference to territorial and state bonds. With reference to county and municipal indebtedness, the words used were, "any in-

debtedness now allowed or that may be hereafter allowed by law". (Appellants' Brief, pp. 39-40). These words never authorized refunding of indebtedness thereafter to be created. (Appellants' Brief, pp. 106-109).

Appellees' Brief, p. 53 (*b*)

The Congressional Act of June 25, 1890 did pledge the credit of the territory for the refunded county obligations. The Act so provides. (Appellants' Brief, pp. 40-43, 108-109). The Committee on Territories so reported the Act. (Appellants' Brief, Appendix p. ii). It is true the counties were not relieved from the payment of the debt, but the territory bound itself to pay the interest and the principal on the bonds. (Appellants' Brief, Appendix, pp. xxxvii, -xl, xli), and the faith and credit of the territory were pledged for the payment of said bonds and the interest. (Appellants' Brief, Appendix, p. xxxiii). Of course, the counties were required to reimburse the territory, but the territory was obligated on the bonds. The Rev. Stat. of 1913 made no material changes in these provisions. Compare Exhibit F with Exhibit G Appendix pp. xx, xxi Appellants' brief. The bonds issued by the territory and the state, for county and municipal indebtedness, were issued in the same form as those issued for territorial indebtedness, as indeed, they had to be, because no other form was authorized by the Act. In 1928, Art. 4, Chap. 60, Rev. Code, 1928, made express provision taking county and municipal bonds out of these provisions.

Appellees' Brief, p. 54 (*c*)

The *Schuerman* case held as stated by appellees but

this holding was based on a territorial statute which did not become a part of the 1913 code.

The *Boyce* case held as stated by appellees but did not hold that the state was not obligated to pay the bonds.

Board of Supervisors v. Hawkins did not hold as stated by appellees. The opinion merely referred to Chap. 1, Tit. 52, R. S. 1913 as a refunding statute.

Appellees' Brief p. 55 (*d*)

The legislature of 1927 and 1935 provided for direct refunding of county and state bonds, respectively, and limited such refunding to optional bonds. By these acts the legislature clearly indicated its approval of optional bonds under the prior territorial and state statutes. If appellees' contentions are correct, such optional bonds could not be legally issued. Hence, the legislature in these acts of 1927 and 1935, placed a construction upon Chap. 1, Tit. 52, R. S. 1913 which is binding on the courts. (Appellants' Brief pp. 35-36, 110, 111).

Appellees' Brief, pp. 55-56

The Miami and Nogales bonds do not aid appellees. They were issued in 1942 and the proceedings for their issuance made no attempt to call outstanding bonds without the consent of the holders.

Appellees' Brief pp. 56-57 (*e*)

The Supreme Court of Arizona held that refunding

bonds are not callable before their due dates. Appellees' statement that Chap. 1 Tit. 52, R. S. 1913 applies to all bonds issued after its effective date is not true.

Maricopa County v. Osborn, 136 Pac. (2d) 270.

Appellees' Brief, pp. 57-58

The principle of prospective operation does not apply to the statute in question. The principle applicable is that the insertion of a statute in a compilation does not change its meaning. (Appellants' Brief pp. 102-104).

Appellees' Brief, pp. 58-59 (*f*)

Appellees' statement under this heading is too broad. The question of whether provisions of a statute other than the particular statute under which the bonds are issued apply, is a question of legislative intent. Ordinarily when the statute under which bonds are issued is complete in itself, other statutory provisions are held not to apply. (Appellants' Brief, pp. 113-114).

Appellees' Brief, pp. 59-60 (*g*)

Undoubtedly said chapter provided for the redemption of county bonds but made no provision for calling bonds not due. Such call of bonds, contrary to their terms, does not fall within the term "manner of redemption". (Appellants' Brief pp. 114-115).

Appellees' Brief, pp. 60-62 (*h*)

Chapters 54 and 86 Ariz. Section Laws 1921 are

primarily acts ratifying the bonds. The arguments and authorities of appellees might have some force if the acts were mere validating acts but the language of Chap. 54 is that the bonds and the contract for their purchase are ratified, approved and declared valid. (Appellants' Brief, Appendix X-LVI). This certainly means that the bonds are declared good as they stand. The bond form was of record, the bonds had been issued and part of them sold. The act was a ratification of the bonds and the contract for their sale, not a mere validation of the proceedings for their issuance. Chapter 86 is less specific but declares the bonds free from any defect. (Appellants' Brief, Appendix pp. L-LI). Appellees' statement that the bond purchase contract could not waive the right to refund the bonds, if such right existed, is true but the ratification of the bonds and bond purchase contract by the state legislature could and did have such effect.

Appellees' Brief, pp. 63-64 (*a*)

The rule of the cases cited by appellees under this heading is subject to the exception that the rule cannot be allowed to defeat a federal right, (Appellants' Brief, pp. 87-88), and to the qualifications stated in the cases cited in Appellants' Brief, pp. 119-120).

Appellees' Brief, pp. 65-66 (*b*)

We think it is clear that to hold a person bound by a judgment entered in a suit to which he has not been a party or privy, deprives him of property without due process of law, and that the rule applies to a specific decision of a state court which is out of line with the law of the state. (Appellants' Brief, pp. 119-120).

Appellees' Brief, p. 68 (*e*)

Chap. 1, Title 52, Rev. Stat. 1913, was originally Act of Cong. June 25, 1890, and became a statute of Arizona by adoption by the State Constitution, and retained its original meaning. (Appellants' Brief, pp. 101, 104).

Appellees' Brief, pp. 69-73

The case of, *Board of Supervisors v. Hawkins*, cited at the bottom of page 69 of appellees' brief, certainly was not a harbinger of the decision of the Supreme Court of the State of Arizona in the two mandamus cases. The fact that amicus curiae briefs were filed does not make the mandamus cases res adjudicata. (Appellants' Brief, pp. 124-125). The appellees' in this case had had no communication with their present counsel when the amicus curiae briefs were filed. The amicus curiae brief of Cox & Cox was filed on behalf of a bond purchaser who urged the Supreme Court to hold that the refunding bonds would be state obligations.

The *Adams Express Co.*, case, at the top of page 73 of Appellees' Brief, simply accepts the decision of a state court to the effect that the law there involved did not violate the state constitution. It does not accept said decision, however, as settling the federal questions involved in that suit.

Appellees' Brief, pp. 73-83 (*c*) (*d*)

In support of the propositions advanced under this heading, appellees cite a large number of cases to sup-

port their contention that the taxpayer's suit and the two mandamus suits were res adjudicata. The taxpayer's suit was brought by J. L. Gust, one of the counsel for appellants, as a citizen and taxpayer, without consultation with his cliens. The complaint in this suit, which is set forth in Appendix No. 1, Appellees' Brief, shows that the purpose of this suit was not to obtain an adjudication that outstanding bonds could not be called, but to have the contract for the purchase of the refunding bonds declared invalid on the ground that it was beyond the power of the Board of Supervisors to grant an option to purchase the bonds, for if the refunding bonds were issued and the outstanding bonds were held not callable, Maricopa County might be subjected to double liability, and if the refunding bonds were not presently issued and the outstanding bonds were held callable, the option price was excessive. The complaint in the taxpayer's suit did not purport to be brought on behalf of other taxpayers.

The case of *Stone v. Bank*, cited on page 74 of appellees' Brief, expressly limits the binding effect of the suit to other taxpayers.

The case of *Luhrs v. City of Phoenix*, cited on page 75 of Appellees' Brief, simply holds that a judgment brought in a representative taxpayer's suit, is binding upon other taxpayers. In that case, no bonds had been issued when either of the cases were decided, and of course, bond holders taking the bonds after the decision in the Luhrs case was made, would be bound thereby as privies to the judgment, but there is nothing in that case, nor in any case that appellees have

cited, to the effect that a bondholder's bonds may be held invalid or depreciated in value by a decision rendered in a taxpayer's suit aaginst public officials. In such cases, the bondholders, having previously acquired their bonds, have a vested property right in them which cannot be destroyed or prejudiced by litigation to which they are not a party. This is evident from the cases cited by appellees. The cases beginning on page 75, and ending on page 78, with a very few exceptions, are taken from the following two notes: 64 *A. L. R.* 1262; 20 *A. L. R.* 1133. An inspection of those notes will show the principle upon which those cases are based, and that the principle has no application to this case.

On pages 78 and 79 is the statement that J. L. Gust appeared on behalf of the bondholders, as shown by his own admission. That statement is not true. He did make a statement that he represented a bondholder, but at that time he did not represent the appellants in this case, nor did he represent bondholders generally.

The cases cited in Appellees' Brief, at the bottom of page 79, and on pages 80 and 81, have no application to the facts of this case. This is established by the cases cited on pages 123-125 of appellants' brief. To these cases we add the following:

Bigelow v. Old Dominion Copper Co.,
225 U. S. 111;
56 L. ed. 1009;
32 Sup. Ct. Rep. 641.

Litchfield v. Goodnow, 123 U. S. 549;
31 L. ed. 199;
8 Sup. Ct. Rep. 210.

Stryker v. Goodnow, 123 U. S. 527;
31 L. ed. 194;
8 Sup. Ct. Rep. 203.

Rumford Chemical Works v. Hygenic Chemical Co.,
215 U. S. 156;
54 L. ed. 137;
30 Sup. Ct. Rep. 45.

Brown-Crummer v. Paulter, 70 Fed. (2d) 184

Garland Co., v. Filmer, 1 Fed. Sup. 8-13.

In re, Board of Education v. City of Perry,
130 Pac. 951.

On this whole question, see *Note* 130, *A. L. R.* 9, which reviews the cases and shows there is no merit in appellees' contention on this point.

Appellees' Brief, pp. 83-89 (2)

There are two answers to the statement that whether the judgment of a state court is res adjudicata, is purely a question of state law and the federal courts are bound thereby.

The first is, there is nothing in the law of Arizona holding that either the judgment in the taxpayer's suit or the judgment in the mandamus suits are res adjudicata as to the bondholders.

The case of, *Luhrs v. City of Phoenix*, simply holds

that the judgment in a representative taxpayer's suit is binding upon other taxpayers. In that case no bonds were issued at the time the opinion in the Luhrs case was written, so, of course, the case could not possibly be a decision to the effect that where a bondholder had previously purchased his bonds and has a personal, vested right by reason of the ownership thereof, this property right might be taken from him by a decision to which he was not a party. The fact that an attorney had previously appeared as amicus curiae, who later became an attorney for the appellants, does not bind the appellants, is held by a number of cases, including the case of *Garland v. Filmer*, 1 Fed. Sup. 8, 13, which is cited by appellees on page 32 of their brief.

Second, the rule stated by appellees that whether the judgment of a state court is res adjudicata, is purely a question of state law, and the federal courts are bound thereby, is subject to the exception that where a federal question is presented, the rule does not apply.

Postal Telegraph Cable Co., v. Newport,
247 U. S. 464, 475;
82 L. ed. 1215;
38 Sup. Ct. Rep. 566.

In this case the court says:

"And, as a state may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard,

(Pennoyer v. Neff, 95 U. S. 714, 733, 24 L. ed. 565, 572. Scott v. McNeal, 154 U. S. 34, 46. 38 L. ed. 896, 901. 14 Sup. Ct. Rep. 1108. Coe v. Armour Fertilizer Works, 237 U. S. 413, 423. 59 L. ed. 1027, 1031, 35 Sup. Ct. Rep. 625, so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein."

The Supreme Court of the United States holds that a public body like the Board of Supervisors or the State Loan Commission, in this case, may not take a writ of certiorari to the Supreme Court of the United States upon the ground that the judgment of the Supreme Court of Arizona would deprive the bondholders of their property without due process of law, or would impair the obligation of their contract.

Braxton County v. W. Va. 208 U. S. 192, 197;
52 L. ed. 450; 28 Sup. Ct. Rep. 275.

Lampasas v. Bell, 180 U. S. 276, 283;
45 L. ed. 527; 21 Sup. Ct. Rep. 368.

Smith v. Indiana, 191 U. S. 138, 148;
48 L. ed. 125; 24 Sup. Ct. Rep. 51.

Columbus, etc. Co., v. Miller,
283 U. S. 96, 99;
75 L. ed. 861, 865; 51 Sup. Ct. Rep. 392.

Appellees suggest, on page 87 of their brief, that the case of *Board of Liquidation v. Louisiana*, is conclusive of this case. It was held on the facts in that case that the Supreme Court would accept the decision of the state court that the drainage commission and the board of liquidation had the right to attack the judgment of the state court on the ground that said judgment, while purporting to protect the rights of the bondholders, would in fact violate those rights. The court, in its opinion, evidently did not consider this decision at variance with the group of cases cited just above. We do not think it is inconsistent, but the point is immaterial for the purposes of this case, because, to hold that the decision made in the state court for the purpose of protecting the rights of the state's boards and agencies, is far from holding that such a decision is binding upon the bondholders when they assert their independent property rights. It is often the case that a court may determine the rights of the parties before it by a decision that will not be binding on other persons who are not parties to the suit. The whole question of alleged prior adjudication is disposed of by the cases cited on pages 123-125 of Appellants' Brief, to which we add the case of, *Chase Nat. Bank v. Norwalk*, 291 U. S. 431; 78 L. ed 894, 54 Sup. Ct. Rep. 475.

It is respectfully submitted that appellees' brief fails to set up any defense to appellants' opening brief, and that the case must be considered by this court on

its merits, and upon such consideration, judgment must be entered in favor of the appellants.

Respectfully submitted,

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